

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JACQUELINE HOYTE, Administratrix of :  
the Estate of BASIL CUFFY, DECEASED, :  
and JACQUELINE HOYTE, in her Own :  
Right, :

Plaintiffs, :

v :

GEORGE WAGNER, et al. :

Defendants. :

CIVIL ACTION  
No. 05-4437

**MEMORANDUM**

**Green, S.J.**

**October 5, 2006**

Presently pending is Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint filed on behalf of Defendants PrimeCare Medical, Inc. (hereinafter "PrimeCare") and Marybeth Jackson, M.D. (hereinafter "Dr. Jackson"), and Plaintiff's response thereto. For the reasons set forth below, Defendants' Motion to Dismiss will be granted in part and denied in part.

**Factual and Procedural Background**

Plaintiff is the widow of the decedent, Basil Cuffy. She initiated this action on August 19, 2005 against Tom Ridge, Secretary of the Department of Homeland Security, William Riley, Bureau of Immigration and Customs Enforcement Local District Director, Berks County, Berks County Prison Board, George Wagner, and the named Defendants, PrimeCare and Dr. Jackson . On August 26, 2005 Plaintiff filed an amended complaint against PrimeCare and Dr. Jackson. On May 25, 2006, Plaintiff filed a second amended complaint (hereinafter "the Complaint") against

PrimeCare and Dr. Jackson. PrimeCare and Dr. Jackson filed the instant motion to dismiss the Complaint.

Defendant PrimeCare is a professional corporation which provides health care services to correctional institutions. According to the Complaint, PrimeCare provided health care services to Berks County Prison during the time of the events pertaining to this action. The Complaint alleges that Dr. Jackson was the Medical Director of PrimeCare's Berks County Branch and was also the decedent's treating physician at Berks County Prison.

Plaintiff asserts that at the time of his death, Basil Cuffy was detained by the United States Citizenship and Immigration Services (hereinafter "USCIS"). Mr. Cuffy was detained at the Berks County Prison in Berks County, Pennsylvania. Mr. Cuffy was held in detention from October 2001 until his death on August 20, 2003. According to the Complaint, Mr. Cuffy became ill in July 2003. Plaintiff complains that Cuffy became ill and that, instead of being placed in the prison's medical ward, he was placed in solitary confinement. Mr. Cuffy's illness worsened and he was subsequently taken to Reading Hospital. Plaintiff claims that Mr. Cuffy's treating physician at Reading Hospital requested that restraints be removed. A Department of Homeland Security law enforcement official allegedly refused. Plaintiff maintains that Mr. Cuffy died in Reading Hospital from his illness.

Plaintiff's claim against PrimeCare and Dr. Jackson consist of the following counts: (1) Failure to Provide Adequate Medical Care pursuant to 42 U.S.C. §1983, and (2) Wrongful Death and Survival Actions. PrimeCare and Dr. Jackson presently seek to have Plaintiff's Second Amended Complaint dismissed because: (1) the Complaint does not show entitlement to relief; (2) Plaintiff has not filed a Certificate of Merit with the Second Amended Complaint as required

by Pennsylvania substantive law; (3) Plaintiff's vicarious liability claim is not viable under 42 U.S.C. § 1983; and (4) the Complaint does not allege a violation of Plaintiff's constitutional rights, as required by 42 U.S.C. § 1983.

Plaintiff responds: (1) the Complaint gives Defendants fair notice of the claims, and grounds for relief; (2) a Certificate of Merit is not required when a claim is not a diversity action for professional negligence; and (3) Plaintiff does not assert a vicarious liability claim in this action.

### **Discussion**

A court should grant a motion to dismiss for failure to state a claim only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishom v. King & Spalding, 467 U.S. 69, 73 (1984). When deciding a motion to dismiss, the court must "construe the complaint in the light most favorable to the Plaintiff, and determine whether, under any reasonable reading of the pleadings, the Plaintiff is entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-6 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989).

The Federal Rules of Civil Procedure authorize notice pleadings in civil proceedings. Fed. R. Civ. P. 8(a) (2006). A unanimous Supreme Court stated that:

[g]iven the Federal Rules simplified standard for pleading, a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. If the pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus on the merits of the claim. (emphasis supplied)

Swierkiewicz v. Sorema, 534 U.S. 506 (2002). This liberal notice pleading requirement also applies to Section 1983 civil rights cases. Leatherman v. Tarrant County, 507 U.S. 163, 167-68 (1993). The Third Circuit has held that a civil rights complaint is adequate if it states the conduct, time, place, and alleged persons responsible for the alleged violation. Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005).

#### **A. Count I of the Complaint**

A private corporation may be sued under Section 1983 for actions taken under the color of state law that deprive a detainee of adequate medical care. Robus v. Pennsylvania Department of Corrections, 2006 U.S. Dist. Lexis 49943 (E.D. Pa. 2006). In order for Plaintiff to hold a corporation responsible under Section 1983, Plaintiff must allege that a corporate policy or practice caused his injuries. Natale v. Camden County Corr. Facility, 318 F.3d 575 (3d Cir. 2003).

In this case, Plaintiff is suing PrimeCare Inc., a professional corporation which provides health care services to Berks County Prison. The Complaint, liberally read, alleges that PrimeCare Inc. and Dr. Jackson followed a policy that led to Mr. Cuffy's death. At the pleadings stage, Plaintiff need not do more than allege a policy or practice. As such, Defendants' Motion to Dismiss Count I against PrimeCare Inc. will be denied.

Defendants may be held liable under § 1983 in their individual capacities when a plaintiff demonstrates that the Defendant: (1) acted under color of state law; and (2) deprived Plaintiff of a federal right. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). In this case, since Plaintiff alleges that Dr. Jackson was providing medical treatment on behalf of the Berks County Prison, the Court concludes that Plaintiff has alleged that Defendant acted under color of

state law. The disputed issue is whether Dr. Jackson deprived Plaintiff of a federal right.

A detainee's right to adequate medical care while being detained is protected by the Due Process clause of the Fourteenth Amendment. See Boring v. Kozakiewicz, 833 F.2d 468, 471 (3d Cir. 1987). Neither the Supreme Court, nor the Third Circuit have determined which specific protections are afforded detainees. The Supreme Court, however, has determined that the due process rights of a detainee are at least as great as the Eighth Amendment protections afforded to convicted prisoners. City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 244 (1983). These rights include the right to adequate medical care.

When evaluating a claim of inadequate medical treatment under the Eighth Amendment, the deliberate indifference standard set in Estelle v. Gamble is used. 429 U.S. 97 (1976). Under this standard, a prisoner who claims a violation of § 1983 on the basis of inadequate medical treatment must show that: (1) his medical needs are serious; and (2) the Defendants' failure to attend to his medical needs rose to the level of deliberate indifference. Spruill v. Gillis, 372 F.3d 218, 235-36 (3d Cir. 2004). A serious medical need is a need that has been diagnosed by a physician as requiring treatment, or a need that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987). Defendants' actions rise to the level of deliberate indifference if the Defendant was aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, defendant draws such an inference, and disregards an excessive risk to the prisoner's health or safety. Farmer v. Brennan, 511 U.S. 825, 832 (1994).

In the Complaint, Plaintiff alleges that the decedent had a serious medical need. Plaintiff states that Mr. Cuffy became ill while under the care of Dr. Jackson, and that illness resulted in

his death. Mr. Cuffy's admittance to Reading Hospital is some evidence that his need for medical care was apparent. Moreover, construed in the light most favorable to Plaintiff, the Complaint alleges that Dr. Jackson failed to provide medical treatment to Mr. Cuffy. As a result, the Complaint continues, Mr. Cuffy died in Reading Hospital. These facts satisfy the liberal notice pleading standard. As such, the Motion to Dismiss Count I against Dr. Jackson will be denied.

#### **B. Count VI of the Complaint**

This Court has jurisdiction over the Plaintiff's Wrongful Death and Survival Actions pursuant to supplemental jurisdiction. 28 U.S.C. §1367 (2006). These claims are based upon Pennsylvania state law. As such, Pennsylvania substantive law governs these claims.

The Pennsylvania Rules of Civil Procedure require a Certificate of Merit to be filed within sixty (60) days of the complaint in any action based upon an allegation that a licensed professional deviated from the acceptable professional standard. Pa. R. Civ. P. 1042.3 (2006). The term "licensed professional" includes any person who is licenced as a health care provider. Krauss v. Claar, et al., 879 A.2d 302, 305-6 (PA Super. 2005). Under Pa. R. Civ. P. 1042.6, failure to file a Certificate of Merit within the required time results in a judgment of *non pros* against the Plaintiff. A *non pros* judgment terminates a plaintiff's case for failure to properly or promptly file a claim. Drombrowski v. Cherkassy, 691 A.2d 976 (Pa. Super. 1997).

In her Wrongful Death and Survival Actions, Plaintiff claims that due to the reckless, conscious, or deliberate indifference of the Defendants, Plaintiff suffered losses. In this Count of the Complaint, Plaintiff claims that Dr. Jackson deviated from the acceptable professional standard of physicians, causing Plaintiff's suffering. We recognize that Plaintiff does not refer to this Count as a professional malpractice action. However, a fair reading of the allegations does

make the Count appear to be a professional malpractice claim brought pursuant to Pennsylvania Law. As such, Count VI is dismissed as to moving Defendants because it is premised upon professional malpractice. An appropriate order follows.

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Right :

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Plaintiff :

CIVIL ACTION

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No. 05-4437

v :

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GEORGE WAGNER, et al. :

:

Defendants. :

**ORDER**

Presently pending is Defendants PrimeCare Inc. and Marybeth Jackson, M.D.'s Motion to  
Dismiss the Plaintiff's Second Amended Complaint, and Plaintiff's response thereto. AND NOW,  
this 5th day of October 2006, IT IS HEREBY ORDERED that:



1. Defendant PrimeCare Inc. and Dr. Jackson's Motion to Dismiss Count I is  
**DENIED.**
2. Defendant PrimeCare Inc. and Dr. Jackson's Motion to Dismiss Count VI is  
**GRANTED.**

BY THE COURT

s/ Clifford Scott Green, S.J.

CLIFFORD SCOTT GREEN, S.J.